

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DAVID RUBEL,

Defendant.

**FIFTH AMENDED
SCHEDULING ORDER**

Case No. 20-cr-195

With good cause shown, defendant's unopposed Motion [25] to extend the deadline to file pretrial motions is granted. The Fourth Amended Scheduling Order [24] is further amended as follows:

- (1) All pretrial motions, both dispositive and non-dispositive, including all supporting papers and memoranda of law in support thereof, shall be filed by **August 17, 2021**. Any motion to suppress statements or physical evidence must initially be accompanied by an appropriate affidavit (or declaration) from an individual with personal knowledge, failing which the court will normally recommend that the motion be denied without an evidentiary hearing. *See United States v. Marshall*, 2012 WL 5511645, *2 (W.D.N.Y.), adopted 2012 WL 5948782 (W.D.N.Y. 2012); *United States v. Longo*, 70 F.Supp.2d 225, 248 (W.D.N.Y. 1999). **ALL MOTIONS SEEKING SEVERANCE ARE TO BE SEPARATELY FILED WITH THE HONORABLE JOHN L. SINATRA, JR.**
- (2) All responses to pretrial motions, including all supporting papers and memoranda of law in support thereof, filed in accordance with the preceding paragraph shall be filed **August 31, 2021**.
- (3) Replies, if any, shall be filed by **September 7, 2021**.
- (4) **Oral argument on any pretrial motions shall be heard on September 14, 2021 at 11:00 a.m.** If necessary, an evidentiary hearing will be scheduled for a later date.
- (5) **IF NO MOTIONS ARE FILED BY ANY DEFENDANT BY AUGUST 17, 2021, THE GOVERNMENT SHALL FILE A MOTION FOR A TRIAL DATE FROM DISTRICT JUDGE SINATRA.**

As of August 17, 2021, no time will have elapsed from the Speedy Trial Act Calendar. For the reasons stated on the record, I find that the government and the public's interest in a speedy trial is outweighed by the defendant's interest in having effective assistance of counsel by allowing sufficient time to review discovery and frame appropriate motions. Therefore, the time period from today's date until August 17, 2021 is excluded under 18 U.S.C. §§3161(h)(7)(A) and 3161(h)(7)(B)(iv).

If pretrial motions are filed on or before August 17, 2021, the period of time from the filing of said motions through September 14, 2021 will be excluded pursuant to 18 U.S.C. §3161(h)(1)(D).

No extension of the above deadlines will be granted except upon written application, filed prior to the deadline, showing cause for the extension. Such application shall indicate whether the opposing party consents to the requested extension and address any further exclusion of time from the Speedy Trial Act calendar. Any motion identified in Rule 12(b)(3) that is not filed by the deadline set for filing pretrial motions will be denied as untimely, unless accompanied by a showing of "good cause". *See* Rule 12(c)(3).

SO ORDERED.

Dated: July 26, 2021

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge